IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

JOSE O. GUZMAN	§	
	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION NO: _______________
	§	
HACIENDA RECORDS, L.P. A/K/A HACIENDA RANCHITO AND/OR DISCOS RANCHITO,	§	
	§	
LATIN AMERICAN ENTERTAINMENT, LLC, and	§	
	§	
ROLAND GARCIA, SR.	§	
	§	
Defendants.	§	JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, JOSE O. GUZMAN, complaining of HACIENDA RECORDS, L.P., LATIN AMERICAN ENTERTAINMENT, LLC, and ROLAND GARCIA, SR., Defendants, and for cause of action shows the following:

I. PARTIES

1. Plaintiff, Jose O. Guzman, is an individual residing in the Southern District of Texas.

2. Defendant, Hacienda Records, L.P. a/k/a Hacienda Ranchito and/or Discos Ranchito ("Hacienda"), is a Texas limited partnership whose principal place of business is located at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404. Hacienda, at all times material to this action, has engaged in business in Texas as more particularly described below. Hacienda maintains

a place of regular business in the Southern District of Texas and may be served with process by serving its registered agent, Gilbert A. Garcia, at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404.

3. Defendant, Latin American Entertainment, LLC ("Latin"), is a Texas limited liability company whose principal place of business is located at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404. Latin, at all times material to this action, has engaged in business in Texas as more particularly described below. Latin maintains a place of regular business in the Southern District of Texas and may be served with process by serving its registered agent, Gilbert A. Garcia, at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404.

4. Defendant, Roland Garcia, Sr. ("Garcia"), is an individual residing in the Southern District of Texas. He has engaged in the acts complained of in the Southern District of Texas. Garcia may be served with summons at his place of business, located at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404, or such other place as he may be found.

5. The term "Defendants" when used throughout this Complaint means the collective Defendants: Hacienda, Latin, and Garcia.

6. Latin is the general partner of Hacienda and is liable for any and all acts of Hacienda. Hacienda, Latin, and Garcia are each the alter egos of the other.

7. Plaintiff believes that Defendants at all times relative to this action were the agents, servants, partners, joint venturers, and employees of each of the other Defendants. In doing the acts alleged herein, each Defendant was acting with the knowledge and consent of the other Defendants. Alternatively, at all times mentioned herein, the Defendants conspired with each other to commit the wrongful acts complained of herein. Each Defendant knowingly performed one or more acts in

direct furtherance of the objectives of the conspiracy. Therefore, each Defendant is liable for the acts of all conspirators.

II. JURISDICTION AND VENUE

8. This action arises under the Copyright Laws of the United States (Title 17, U.S.C. §101 et seq.) and the common law of the State of Texas.

9. This Court has exclusive jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 in that this action involves claims arising under the Copyright Laws of the United States. To the extent that this action is based on related state claims, the Court has supplemental jurisdiction thereto under 28 U.S.C. §1367.

10. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. §§ 1391and 1400 in that Defendants conduct business in the State of Texas and within this District.

III. FACTS APPLICABLE TO ALL COUNTS

11. Plaintiff, Jose O. Guzman, is a musician and songwriter who performed for many years throughout Texas with various regional Mexican bands. He authored both the lyrics and the music to various Tejano songs– including an original musical composition titled "Dos Horas de Vida." Plaintiff is the copyright owner of "Dos Horas de Vida," and has complied with the statutory registration and deposit requirements of the Federal Copyright Act of 1976 (PA0001810496). (**Exhibit A**).

12. Despite his musical achievements, Plaintiff is unsophisticated and has little formal education. At the time of this filing, Plaintiff is 90-years-old. He does not read or speak English, and lives in virtual poverty. Plaintiff cares for his spouse of 58 years, who is bed-ridden at home and unable to attend to any of her basic needs, such as personal hygiene or feeding.

13. Defendant, Hacienda, which also uses the assumed names Hacienda Ranchito and/or Discos Ranchito, comprises a sophisticated Tejano music label which manufactures, produces, sells and distributes Tejano albums. Defendant, Latin, is the general partner of Hacienda Records, L.P. and is liable for any and all acts of Hacienda (**Exhibit B**). Defendant, Garcia, is the co-founder, co-owner and President of Hacienda.

14. In approximately 2011, Plaintiff traveled to meet Garcia at the offices of Hacienda and Latin to showcase several of his musical compositions – including "Dos Horas de Vida." Plaintiff made approximately two separate trips from the outskirts of Robstown, Texas, to meet Garcia in Corpus Christi, Texas. Garcia met with Plaintiff during each such trip and reviewed Plaintiff's musical compositions. However, no agreements were reached concerning any of Plaintiff's compositions.

15. Following the trips in 2011, Garcia called Plaintiff and told him that Garcia was going to send Plaintiff a check to reimburse him for gasoline used traveling to and from their meetings in Corpus Christi, Texas. Thereafter, Plaintiff received a $75.00 check from Garcia (**Exhibit C**). Based on Garcia's representations that the check was reimbursement for gasoline, Plaintiff deposited the check.

16. Plaintiff was shocked to later discover that Hacienda and Latin, with Garcia's knowledge and consent, released one or more albums embodying recorded performances of his original musical composition, "Dos Horas de Vida." Despite the absence of a valid license, Hacienda and Latin proceeded to manufacture, produce, sell and distribute records that contained "Dos Horas de Vida" on various albums– including a Los Garcia Bros. album titled, "Mis Locos Desvarios" (HAC-8209) (**Exhibit D**).

17. Plaintiff's shock turned to anguish and dismay when he learned that Garcia is falsely and inaccurately identified as the author of "Dos Horas de Vida" on the album "Mis Locos Desvarios" (Exhibit D). Garcia had no role in composing or creating "Dos Horas de Vida" and was not assigned any rights in or to "Dos Horas de Vida" by Plaintiff.

18. Plaintiff, who does not read or speak English, was further shocked to discover that the $75.00 check from Garcia, which he thought was for reimbursement of gas money, included a notation by Garcia that it was in fact some sort of payment for rights to "Dos Horas de Vida." The notation was written in English, in small print, at the bottom of the check (Exhibit C). Plaintiff promptly refunded the $75.00 "gasoline reimbursement."

19. The conduct of Hacienda, Latin, and Garcia was fraudulent and predatory. Garcia knowingly and intentionally took advantage of Plaintiff's and, thereby, fraudulently induced Plaintiff into a transaction he would not otherwise enter. Hacienda, Latin, and Garcia used Plaintiff's inability to speak, read, or understand English to fraudulently construct a basis to claim rights to valuable intellectual property that did not belong to them.

20. Due to their unauthorized exploitation of "Dos Horas de Vida," all Defendants profited financially from the use and exploitation of Plaintiff's original work.

IV. CAUSES OF ACTION

A. COPYRIGHT INFRINGEMENT

21. Plaintiff hereby adopts and realleges each and every paragraph of the section titled "Facts Applicable to All Counts," as well as the allegations made in all other parts of this pleading.

22. Plaintiff brings a claim of copyright infringement against all named Defendants: Hacienda, Latin, and Garcia.

23. Plaintiff is the author and copyright owner of the original lyrics and music in the musical composition, "Dos Horas de Vida." Defendants Hacienda and Latin, with the knowledge and authorization of Garcia, produced and/or sold the numerous albums and products containing "Dos Horas de Vida," without a proper license or permission from Plaintiff, and disseminated them to the public.

24. Pursuant to 17 U.S.C. §106 and §115, Defendants' exploitation of "Dos Horas de Vida" without a license or permission from Plaintiff, is a violation of Plaintiff's exclusive ownership of the copyrighted work. Per 17 U.S.C. §501, anyone who violates any of the exclusive rights of the copyright owner is an infringer of the copyright.

25. Chapter 17 covers infringement by both corporate entities and individual persons. See *Broadcast Music, Inc. v. Claire's Boutiques, Inc.*, 949 F.2d 1482, 1490 (7^{th} Cir. 1991). Garcia personally profited from the infringements of Hacienda and Latin. As a result, Garcia infringed upon Plaintiff's intellectual property rights in "Dos Horas de Vida."

26. Garcia has several decades of experience in the Tejano music industry and is well aware of the obligation to obtain mechanical licenses and, when obtained, pay statutory license fees. However, Garcia chose to ignore these obligations and authorized his corporate entities, Hacienda and Latin, to manufacture and produce records exploiting "Dos Horas de Vida."

27. Garcia is personally liable for the copyright infringements alleged herein by reason of his (1) contributory liability, (2) vicarious liability, and/or (3) the benefit received from such infringements.

28. Garcia is liable under the contributory infringement theory because he had knowledge of the infringing activity and directly participated or engaged in activity which induced, caused or materially contributed to the infringing activity of another.

29. In addition, Garcia is or may be liable under the vicarious liability theory because he had the right and ability to supervise the infringing conduct and had an obvious and direct financial interest in the infringing activity.

30. Upon information and belief, none of the Defendants kept a true or accurate record of the products that they manufactured in-house or sold on the Hacienda Records premises, located at 1236 South Staples, Corpus Christi, Nueces County, Texas 78404. Defendants' failure to properly keep and maintain production and sales records causes financial harm to Plaintiff.

31. Defendants profited from the unlawful and unauthorized exploitation of "Dos Horas de Vida" and Defendants are liable for copyright infringement. Further, Defendants' infringement of Plaintiff's intellectual property rights was willful.

32. Defendants wrongfully named and credited Garcia as the composer of "Dos Horas de Vida" on at least one album cover– for the "Los Garcias Brothers" album. Defendants failed to credit Plaintiff as the author of "Dos Horas de Vida" in an intentional effort to conceal their willful infringement.

33. In addition, Defendants continue to take advantage of Plaintiff by collecting revenue from the use and exploitation of "Dos Horas de Vida" when they have no right to such revenue.

34. Defendants' conduct constitutes willful infringement. They have shown intentional and/or reckless disregard for Plaintiff's rights in and to his original Work, "Dos Horas de Vida."

B. TAMPERING WITH COPYRIGHT MANAGEMENT INFORMATION

35. Plaintiff hereby adopts and realleges each and every paragraph of the section titled "Facts Applicable to All Counts," as well as the allegations made in all other parts of this pleading.

36. Plaintiff brings a claim of tampering with copyright management information against all named Defendants: Hacienda, Latin, and Garcia.

37. Plaintiff is the author, creator, and registered copyright owner of "Dos Horas de Vida." As such, he owns all rights and interests in and to "Dos Horas de Vida." He has not given, granted, licensed, or assigned any of these rights for the purposes of exploitation to any other person or entity– including the Defendants.

38. However, Hacienda and Latin wrongfully and inaccurately credit Garcia as the author of "Dos Horas de Vida" on the album cover of the Los Garcia Bros. C.D., "Mis Locos Desvarios." Garcia had no part in composing or creating "Dos Horas de Vida." Nonetheless, Hacienda and Latin, with the knowledge and consent of Garcia, proceeded to produce, sell, manufacture, and distribute products containing this incorrect copyright information.

39. By falsely identifying Garcia as the author of "Dos Horas de Vida," Defendants are in violation of Section 1202(b) of the Digital Millennium Copyright Act, which prohibits the intentional misstatement, removal or alteration of copyright management information that is conveyed in connection with copyright work.

40. Plaintiff's finances and reputation have suffered as a result of Defendants' violation of the Digital Millennium Copyright Act. Defendants' violation of the Digital Millennium Copyright Act causes confusion in the marketplace to Plaintiff's detriment.

41. Consequently, Plaintiff seeks an accounting and payment of all sums received by Defendants for the use and exploitation of "Dos Horas de Vida." Plaintiff also seeks the impoundment and destruction of all Hacienda Records, L.P. albums containing "Dos Horas de Vida" that credit any person other than Plaintiff as the composer– including but not limited to all copies of the Los Garcia Bros. album, "Mis Locos Desvarios."

C. DECLARATORY JUDGMENT

42. Plaintiff hereby adopts and realleges each and every paragraph of the section titled "Facts Applicable to All Counts," as well as the allegations made in all other parts of this pleading.

43. Pursuant to 28 U.S.C. §2201, Plaintiff respectfully requests that the Court terminate the controversy giving rise to these proceedings and declare the rights and legal relations of the parties in this case. Plaintiff seeks a declaration by the Court that has the force and effect of a final judgment or decree with respect to the following issues:

a. That Plaintiff is the owner of, and is entitled to possess and control, all rights in all copyrights in the musical composition, "Dos Horas de Vida;"

b. That the Defendants, Hacienda, Latin, and Garcia, and any persons or entities related thereto, are not entitled to possess or exploit the musical composition, "Dos Horas de Vida;"

c. That Plaintiff is entitled to an accounting for all revenue and profits from the Defendants', Hacienda, Latin, and Garcia, exploitation of "Dos Horas de Vida."

D. FRAUD, FRAUDULENT INDUCEMENT

44. Plaintiff hereby adopts and realleges each and every paragraph of the section titled "Facts Applicable to All Counts," as well as the allegations made in all other parts of this pleading.

45. Plaintiff brings an alternative claim of fraud and fraudulent inducement against Garcia.

46. In the unlikely event that it is determined that the $75.00 "gasoline reimbursement" check issued by Garcia to Plaintiff constitutes some sort of agreement regarding the rights in or to "Dos Horas de Vida," Plaintiff alleges that such transaction was fraudulent and crafted by Garcia with the specific intent of depriving Plaintiff of his valuable intellectual property for a mere pittance.

47. Garcia made representations to Plaintiff, all of which were material, pertaining to the purpose of the subject $75.00 check. At the time Garcia made these representations, he knew the representations were false, and that he actually intended to strip Plaintiff of rights to "Dos Horas de Vida." Garcia made the representations with the intent that Plaintiffs act on them.

48. Plaintiff deposited the $75.00 check in his account– acting in reliance on Garcia's promise and representation that the money was reimbursement for gasoline money for Plaintiff's trips to and from Corpus Christi, Texas. Plaintiff trusted and relied on Garcia's representation, and would not have deposited the $75.00 check in his account had he disbelieved Garcia. Plaintiff has been injured by the false representations made by Garcia.

49. Plaintiffs will further show that Garcia's actions were undertaken with ill will, spite, and evil motive. For these reasons, Plaintiff hereby seeks an award of exemplary damages.

V. ATTORNEYS FEES

50. Plaintiff is entitled to an award of reasonable and necessary attorneys' fees. Such an award is equitable and is authorized by 17 U.S.C. § 505 and § 1203.

VI. DAMAGES AND REMEDIES

51. Plaintiff has suffered damages and losses as a direct, producing, and proximate cause of the acts and omissions of all named Defendants as alleged herein. Specifically, Plaintiff has suffered financial and pecuniary loss due to Defendants' repeated and willful infringement of his

intellectual property rights in the musical composition "Dos Horas de Vida." Such infringement includes the unlicensed and unauthorized production and distribution of products containing Dos Horas de Vida."

52. Plaintiff also has suffered financial loss due to Defendants' Hacienda and Latin failure to or provide him with a true and proper accounting upon request for the use and exploitation of "Dos Horas de Vida." Plaintiff cannot be truly compensated for his loss due to Defendants' Hacienda and Latin failure to keep proper records of their manufacturing, sales, and distribution activities– which include products embodying "Dos Horas de Vida."

53. Plaintiff seeks statutory damages for all named Defendants' copyright infringement of the musical composition, "Dos Horas de Vida," as provided by 17 U.S.C. §504(c), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999." He seeks statutory damages under 17 U.S.C. § 1201-1204 for Defendants' conduct. Further, Plaintiff seeks an increase in statutory damages for all named Defendants' willful infringement, as provided in 17 U.S.C. §504(c)(2) and 17 U.S.C. § 1203(c)(1)-(4), amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999." As detailed throughout the Complaint, all named Defendants have acted with conscious indifference, malice, and a total disregard for Plaintiff's rights. Plaintiff seeks a recovery of exemplary damages as an alternative or supplemental damage award.

54. In addition, Plaintiff requests that the Court declare the rights and obligations of the parties in respect of the musical composition, "Dos Horas de Vida," pursuant to 28 U.S.C. §2201, and as further detailed in the section titled "Causes of Action: Declaratory Judgment." Plaintiff further seeks an Order requiring all named Defendants to refrain from representing to any persons that Defendants have any right or interest in "Dos Horas de Vida."

55. Pursuant to 17 U.S.C. §503(a)(1)(A), Plaintiff also requests that the Court order the impounding of all products that contain a recording of "Dos Horas de Vida" which were made or used in violation of Plaintiff's exclusive rights as copyright owner. Plaintiff further requests that the Court order the impounding of all records documenting the manufacture, sale, or receipt of things involved in any such violation, pursuant to 17 U.S.C. §503(a)(1)(C). Plaintiff seeks an award of damages by reason of the willful infringements committed by Defendants.

56. Plaintiff seeks a recovery of all court costs, as provided by 17 U.S.C. §§ 505 and 1203.

57. Plaintiff seeks a recovery of reasonable and necessary attorneys' fees, as provided by 17 U.S.C. § 505 and § 1203.

VII. DEMAND FOR A JURY TRIAL

58. Plaintiff hereby demands a trial by jury.

PRAYER

WHEREFORE, premises considered, Plaintiff requests that on final trial, Plaintiff has:

1. Judgment against all named Defendants for all actual and exemplary damages as alleged by Plaintiff;

2. That Plaintiff recover the amount of all of Plaintiff's damages and all named Defendants' profits attributable to the infringement of "Dos Horas de Vida" or, in the alternative, for statutory damages as authorized by 17 U.S.C. §504(c) and §1203, amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999";

3. That all named Defendants pay Plaintiff triple damages and additional damages for willfully infringing upon Plaintiff's copyright in "Dos Horas de Vida" as authorized by 17 U.S.C. §504(c)(2) and §1203, amended by the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999";

4. A declaration that none of the named Defendants have any right in and to "Dos Horas de Vida," including the right to receive any revenues, consideration or benefit related to exploitation of the same;

5. Reasonable and necessary attorneys' fees with conditional sums for the service of Plaintiff's attorney in the event of subsequent appeals, which include the following:

   a. Preparation and trial legal services;

   b. Post-trial, pre-appeal legal services;

   c. An appeal to the Fifth Circuit Court of Appeals; and

   d. An appeal to the United States Supreme Court.

6. Post-judgment discovery and collection in the event execution on the judgment is not necessary;

7. Pre-judgment and post-judgment interest at the highest rate allowed by the law;

8. Court costs; and

9. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SHOWALTER LAW FIRM

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